

**MINUTES**  
**Independence Planning Commission/Board of Zoning Appeals**  
**Tuesday, April 5, 2016**  
**Veterans Room, Memorial Hall 5:30 p.m.**

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**Call to Order**

**Planning Commissioners Present**

Jim Hardy, Steve McBride, Mary Schmidt, Darnell Lawrie, Philip Umlauf and Nick McCollam\*

**Planning Commissioners Absent**

John Faller, Mary Jo Dancer\* and Tony Holmes

\*Outside Appointments

**Staff Present**

Jennifer Rutledge, City Clerk/Finance Director

**Visitors Present**

Robert "Bob" Pierce, Rick Mott, Brian Williams and Leonhard Caflisch

**a. Consider approving minutes of the March 1, 2016 meeting.**

Mary Schmidt made a motion to approve the minutes from the March 1, 2016 meeting. Philip Umlauf seconded the motion to approve the minutes. Motion carried 6-0.

**Planning Commission**

**b. Consider a request to zone two tracts of land:**

- a. 510 (North) Peter Pan Road -- From City R-4, medium density multifamily to C-4, highway commercial district; and**
- b. 584 (North) Peter Pan Road -- From County, R-1 residential to C-4, highway commercial district**

Brian Williams presented the plan for the property in question. Bob Pierce in the audience asked what the plans were for Peter Pan Road. Jen Rutledge asked Bob who the question was directed at in particular. He explained that anyone that would want to answer it could. Jen Rutledge explained that the City is considering a project that would be complete at the corner of Peter Pan and Main, but that it would extend only to the City limits and no further. She also explained that she is unaware of any plans that the County may have for Peter Pan Road, but that the County would need to be part of the discussion.

Bob made it clear that he is concerned about the amount of traffic on Peter Pan and the poor conditions of the road for that amount of traffic. His park alone can put about 300 cars on the road, and with the addition of the Labette Health clinic, as well as the soccer fields just up the road, he is concerned about the road handling the traffic. He would also like to remind the City that people from the North, like Neodesha, etc., come in to town and take Taylor to Peter Pan to get to Walmart without having to drive through town.

Staff provided the following information:

***Summary:***

The Planning and Zoning Commission received a request from JAG Investments, Inc. and Labette Health Regional Partnerships, Inc. to rezone the above listed property to C-4, highway commercial for the purpose of constructing a medical facility that will be utilized for Hospital Services; Medical clinics, outpatient services and Medical laboratory services. The two tracts requested to be zoned total approximately 10 acres.

The legal descriptions are:

510 (North) Peter Pan Road – The South 500' of NW/4 SE/4 SW/4 of Section 26, Township 32 South, Range 15 East, Montgomery County, KS; excluding any ROW; and

584 (North) Peter Pan Road – The North 160' of the NW/4 SE/4 SW/4 of Section 26, Township 32 South, Range 15 East, Montgomery County, KS; excluding any ROW.

***Description of the Tract:***

The property requested to be zoned lies in the west portion of the City. The parcels were previously utilized for agricultural type uses. The parcel at 510 (North) Peter Pan was previously rezoned for a multi-family housing development that was never constructed.

***Zoning and Uses of Property Nearby:***

The adjacent property directly to the north and east is M-1, to the south is C-4 and M-1. To the west is County residential and agriculture. Southwest is C-4.

***Character of the Neighborhood:***

The area generally consists of industrial, commercial and some residential and agricultural uses.

***Suitability of the Subject Property for the Uses to which it has been Restricted:***

The property under consideration is currently zoned City R-4 (medium density multifamily) and unzoned County R-1 (low density single family residential).

***Length of Time the Property has Remained vacant as Zoned:***

Other than some single family residences and out buildings, the property has not been further developed.

***Extent to which Removal of Restrictions will Detrimentally affect Nearby Property:***

The surrounding property does include residential properties which are not directly adjacent that could be impacted by a commercial zoning change; however, it is not believed that this impact would be detrimental. This zoning classification would be consistent with the adjacent zoning to the south and southwest.

***Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:***

Denial of the proposed rezoning will impact the new owner's use of the property as it will not allow them to develop a medical facility as planned.

***Conformance with the Comprehensive Plan:***

The general development plan map recommends the area be developed as commercial.

The General Development Goal provides:

*To provide ample opportunity for continued community development within an orderly, efficient and environmentally safe planning framework.*

The Commercial Goal provides:

*To provide sufficient neighborhood and community-wide shopping facilities efficiently distributed throughout the community and adequate opportunity for commercial expansion.*

Objective C2 of the Comprehensive Plan provides:

*Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated in downtown.*

***Staff Recommendation***

Staff's recommendation is to zone the property to C-4.

**c. Consider a conditional use permit for a Medical facility at 510-584 Peter Pan Road.**

Staff presented their report on the conditional use permit as follows:

***Summary***

Section 901.2 of the zoning code authorizes the Planning and Zoning Commission to recommend a conditional use permit for a permitted use if by its nature and operation has the following characteristics (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety. In reviewing this project City staff believes that this use meets that criteria.

*The tendency to generate excessive traffic:* At present this neighborhood has residential, commercial, agricultural and industrial uses. It is anticipated that additional traffic will be generated due to this development.

*A potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants:* This development will attract a larger number of persons to the area than the current residential use.

*A detrimental effect upon the value of or potential development of other properties in the neighborhood:* Based on the present residential use changing to commercial use it is believed that any effect upon the value of properties or potential future development will be positive and not detrimental.

*An extraordinary potential for accidents or danger to the public health or safety:* It is not anticipated that public health and safety will be impacted unless the development creates a potential for additional traffic accidents.

Below are the common addresses and legal descriptions of the parcels to be utilized as a medical facility:

510 (North) Peter Pan Road – The South 500' of NW/4 SE/4 SW/4 of Section 26, Township 32 South, Range 15 East, Montgomery County, KS; excluding any ROW; and

584 (North) Peter Pan Road – The North 160' of the NW/4 SE/4 SW/4 of Section 26, Township 32 South, Range 15 East, Montgomery County, KS; excluding any ROW.

The zoning ordinance in section 901.1 (page 87) describes the purpose of a conditional use as:

*"...those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have: 1) a tendency to generate excessive traffic, 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants, 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or 4) an extraordinary potential for accidents or danger to the public health or safety. Such conditional uses cannot be allowed to locate as a 'right' on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects."*

#### **Staff Report**

Article IX of the Zoning Ordinance addresses purpose and authority for granting conditionals uses.

##### **901.0. Purpose and authority.**

*901.1. Purpose: Conditional uses are those types of uses which are considered by the city to be essentially desirable, necessary, or convenient to the community but which by their nature or operation have (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety.*

*Such conditional uses cannot be allowed to locate as a "right" on any parcel of land within certain districts without consideration of existing conditions at the proposed location and of properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse factors.*

*901.2. Authority to grant permits: The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for which*

the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located.

(Ord. No. 3863, § 1, 12-20-01)

In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend a conditional use shall be based on the following criteria (902.2):

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation. *The conditional use permit does comply with the C-4 district regulations. The applicant will also be required to follow all other regulations, including off street parking requirements.*
- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public. *It is believed that this new medical clinic will contribute to the welfare or convenience of the public.*
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. *Based on the character of the neighborhood it is not believed that this expansion will have a detrimental effect on the neighborhood. More than likely the development will have a positive impact on the neighborhood.*
- d. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
  1. The location, nature and height of buildings, structures, walls and fences on the site, and
  2. The nature and extent of landscaping and screening on the site.

*The property will be required to meet all district regulations. The expansion is being built on a lot that is approximately ten acres in size, therefore it will not dominate the area.*

- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII). *The applicant is required to provide adequate parking and will follow the off-street parking regulations.*
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided. *Drainage will be addressed through the site plan review and will also be addressed in the conditional use permit.*
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys. *City staff will be working with the applicant to ensure that the ingress and egress will be designed to minimize traffic hazards.*

The zoning and uses of the surrounding properties have been presented in the rezoning report.

#### ***Action by the Planning Commission***

Any recommendations regarding a conditional use permit for the subject property shall be based on Section 902.2 previously outlined in this report. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

#### ***Staff Recommendation***

City staff recommends the granting a conditional use permit for the following permitted uses in a C-4 district: Medical clinics, outpatient services; Medical laboratory services and Hospital services with the following conditions:

1. The conditional use permit is not transferable to another location and will be binding on all future owners, assigns or heirs.
2. The applicant will obtain all necessary City of Independence and State of Kansas permits to operate the uses proposed.
3. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
4. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
5. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining properties.
6. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
7. Any off street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees of the business. Such parking area may not be used for storage of vehicles, equipment or merchandise.
8. A drainage plan must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to impose on nearby or downstream properties.

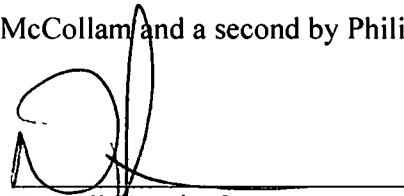
9. All property lines must be established by a surveyor licensed in the State of Kansas.
10. A detailed site plan and landscaping plan shall be submitted to and approved by City staff prior to any such work commencing.
11. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.

Staff's recommendation is based on the criteria set forth in 902.2, "a through g" of the zoning code.

A motion was made by Steve McBride, seconded by Nick McCollam to recommend to the City Commission rezoning of the property located at 510 and 584 Peter Pan Road to C-4 with a conditional use permit for the following permitted uses in a C-4 district: Medical clinics, outpatient services; Medical laboratory services and Hospital services with the conditions as recommended by staff based on the criteria set forth in 902.2, "a through g" of the zoning code.

#### **Adjournment**

The meeting was adjourned with a motion by Nick McCollam and a second by Philip Umlauf. The motion carried 6-0.

  
Mary Schmidt, Chair  
Darnell Lawrie, Secretary